IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 6489 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIVISONAL CONTROLLER GSRTC

Versus

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Appearance:

1. Special Civil Application No. 6489 of 1988
MR HARDIK C RAWAL for Petitioner No. 1
SERVED BY AFFIX.-(R) for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 05/11/2004

ORAL JUDGEMENT

Heard learned advocate Mr. Hardik C. Raval for the petitioner. The respondent though served with a notice of rule issued by this Court, has not remained present either in person or through any advocate. However, considering the fact that it is a matter of the year 1988, the Court has taken up this petition for final hearing today in absence of the respondent workman.

2. IN this petition under Article 227 of the Constitution of India, the petitioner corporation has challenged the award made by the Labour Court, Baroda in

Reference (LCV) No. 172 of 1983 dated 12th May, 1988 wherein the labour court Baroda has set aside the order of dismissal dated 11th March, 1982 and granted reinstatement in favour of the workman on his original post with continuity of service without back wages for the intervening period.

3. By order dated 15.11.1988, this Court has issued rule and has expedited the hearing of the matter. Thereafter, by order dated 25.1.1991, this Court has refused the interim relief. Therefore, the respondent must have been reinstated in service.

4. Learned advocate Mr. Hardik Raval appearing for the petitioner has submitted that in view of the recent decision of the apex court, this being a case of misappropriation of the funds of the corporation, the labour court ought not to have exercised the powers under section 11-A of the ID Act, 1947. Except these submissions, no other submissions were made by the learned advocate Mr. Hardik Raval on behalf of the petitioner.

5. I have considered the submissions made by the learned advocate Mr. Raval on behalf of the petitioner. I have also perused the impugned award made by the labour court.

6. Before the labour court, the respondent workman has filed the statement of claim at Exh. 3 and at that time, he had completed more than five years service in the corporation. The incident is dated 26th November, 1981 when the respondent conductor was on route from Vanadara to Nyayamandir. While on the way, his bus was checked by the checking squad wherein it was revealed that the conductor was issuing the tickets contrary to the rules of the establishment. It was alleged that he had issued tickets of lesser amount though had recovered full fare and has committed an act of dishonesty with mala fide intention. When the traffic cash was checked by the checking staff, at that time, there was shortage of Rs. 17.35 in the traffic cash. Thereafter, he was served with charge sheet and after completion of the departmental inquiry, he was dismissed from service on 11th March, 1982.

7. Labour court has considered this incident in detail as discussed in paragraph 5 of the impugned award. In departmental inquiry, witnesses namely R.D. Mayavanshi, Gunvantrai Narayanrao, Ratilal Ambalal, Sadhu Devendrabhai Bhailal and the conductor Shri Nai were

examined. The labour court has considered the defence of the conductor that because of his ill health, some passengers were found without ticket in the bus which was also supported by the Inspector and the Medical Certificate to that effect was also produced by the workman. It was also his defence that he had prayed for leave in the depot because of his ill health but due to shortage of conductors, his leave was not sanctioned. It was also his defence that if he would have recovered the amount of fare but not issued the ticket, then, instead of shortage of Rs.17.35 in his traffic cash, excess amount would have been found from his traffic cash.

8. The labour court has come to the conclusion that it was a bona fide mistake on the part of the conductor and that was amounting to negligence on the part of the conductor and the intention to misappropriate the amount of fare was not established as observed by the labour court at page 17 of the compilation, internal page 9 of the award. The labour court has analyzed the evidence led the departmental inquiry and while reappreciating the evidence in the departmental inquiry, the labour court come to the conclusion that the charge of misappropriation has not been established against the conductor but it was a crystal case of bona fide mistake and negligence on the part of the conductor and there was no any concrete evidence led by the corporation to prove the charge of dishonesty and misappropriation. The labour court has also observed that some passengers were not obtaining tickets from the conductor and the labour court has considered negligence and bona fide mistake on the part of the conductor and has denied the back wages of the intervening period on the basis of the purshis filed by the workman. Ultimately, the labour court come to the conclusion that the serious charge of misappropriation was not established against the workman and it was mere negligence and bona fide mistake on the part of the conductor and for that, punishment of dismissal is considered to be harsh and unjustified. The labour court has considered the decision of this court in Ganeshbhai Jalabhai Waghela versus State of Gujarat reported in 1985 GLH (UJ) page 8. The labour court has also observed that looking to the evidence led in the departmental inquiry and considering the charges levelled against the workman, charge of misappropriation of amount dishonestly has not been established and mere negligence has been proved for which punishment of dismissal is harsh and, therefore, in exercise of the powers under section 11-A of the ID Act, 1947, the labour court has granted reinstatement in favour of the workman without back wages for the intervening period. In case if the

labour court is satisfied on the basis of the material produced before it that the punishment of dismissal is disproportionate to the proved misconduct, then, the labour court can, in exercise of the powers under sec. 11A of the Act, interfere with the findings recorded by the inquiry officer and can also grant reinstatement.

I have perused the award in question. I have also considered the observations made by the labour court. According to my opinion, considering the shortage of Rs.17.35 in the traffic cash of the conductor, it cannot be said that the conductor has mistppropriated the amount because if he would have recovered excess amount and has issued ticket of lesser amount, then, there would have been excess in his traffic cash which is not here and, therefore, the labour court was right in forming an opinion that the charge of misappropriation or dishonesty has not been proved against the workman and in view of that, the labour court was also right in forming an opinion that there was mere negligence and bona fide mistake on the part of the workman. According to my opinion, the labour court has not committed any error while passing such an award. There is no jurisdictional error committed by the labour court requiring interference of this Court. Learned advocate Mr. Raval has not been able to point out any infirmity and/or procedural irregularity committed by the labour court. Therefore, there is no substance in the petition and the same is required to be dismissed.

It is also required to be noted that this is a petition of the year 1988 relating to the incident of the year 1981 wherein rule was issued by this Court on 15.11.1988 and interim relief was refused on 25.1.1991 and, therefore, natural effect would be that the workman must have been reinstated in service by now and more than thirteen years have passed thereafter. In view of that also, it is not proper for this court to disturb the award in question made by the labour court. Once the findings are recorded by the labour court after reappreciating the evidence led in the departmental inquiry, this Court cannot reappreciate the same in exercise of the powers under Article 227 of the Constitution of India. There is no infirmity in the award and, therefore, according to my opinion, there is no substance in this petition and the same is required to be dismissed.

In the result, this petition is dismissed. Rule is discharged. No order as to costs.

(H.K. Rathod,J.)

Vyas